

1 EXHIBIT 5
2
3
4
5
6
7
8
9
10
11
12

EXHIBIT 5

13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT 5

FILED
Electronically
CV14-00544
2016-07-14 01:41:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5608947

1 PAUL J. ANDERSON, ESQ.
2 Nevada Bar No. 709
3 PROCTER J. HUG, IV, ESQ.
4 Nevada Bar No. 12403
5 MAUPIN, COX & LeGOY
6 4785 Caughlin Parkway
7 Reno, Nevada 89519
8 Telephone: (775) 827-2000
9 Facsimile: (775) 827-2185
10 *Attorneys for Defendants*

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

12 IN AND FOR THE COUNTY OF WASHOE

13 MANUEL GRAIWER and T.J. JESKY
14 derivatively on behalf of BAKKEN RESOURCES,
15 INC., a Nevada Corporation,

16 Plaintiffs,

17 Consolidated
18 Case No.: CV14-00544

19 Dept. No.: B7

20 VAL HOLMS, an individual, HERMAN
21 LANDEIS, an individual, KAREN MIDLYING,
22 an individual, DAVID DEFFINBAUGH, an
23 individual, BILL BABER, an individual,
24 W. EDWARD NICHOLS, an individual, WESLEY
25 PAUL, an individual, and DOES 1-100,

26 Defendants,

27 ORDER

28 BAKKEN RESOURCES, INC., a Nevada
29 Corporation,

30 Nominal Defendant.

31 Case No.: CV16-01086

32 Dept. No.: B7

33 VAL HOLMS, an individual,

34 Plaintiff,

35 vs.

1 BAKKEN RESOURCES, INC., a Nevada
2 corporation, DAN ANDERSON, an individual,
3 KAREN MIDLYNG, an individual; HERMAN
4 R. LANDEIS, an individual, BILL M. BABER,
5 an individual, SOLANGE CHARAS, an individual,
6 DOUGLAS L. WILLIAMS

7 Defendants.

8 On May 17, 2016, Plaintiff Val Holms (“Plaintiff” or “Holms”), filed a Verified
9 Complaint together with an Ex Parte Motion and Application for Temporary Restraining Order
10 and Request for Hearing on Preliminary Injunction (“Plaintiff’s Motion), against the Defendants
11 identified in Case No. CV16-01086, above. On May 24, 2016, Judge Freeman heard the
12 Application for Temporary Restraining Order on an Ex Parte basis and granted a TRO¹ in favor
13 of Plaintiff Holms.

14 Case No. CV16-01086 was transferred to this Court pursuant to a Stipulation and Order
15 for Consolidation of Cases and Continuance of Preliminary Injunction Hearing dated June 15,
16 2016. That case was consolidated with the other action styled above, denominated as Case No.
17 CV14-00544, and commonly referred to as the Derivative Action.

18 On June 20, 2016, Defendants Bakken Resources, Inc., a Nevada corporation (“BRI”)
19 together with Dan Anderson, Karen Midlyng, Herman Landeis, Bill Baber, Solange Charas, and
20 Douglas L. Williams (“Director Defendants”), collectively referred to herein as “Defendants,”
21 filed their Opposition to Plaintiff’s Motion. Leave to file an Opposition in Excess of the 15
22 page-limit was filed by Defendants on June 21, 2016 and an Order Granting that Motion was
23 entered on June 24, 2016.

24
25
26
1 The TRO was erroneously denominated Order Granting Preliminary Injunction. It should have read
“Order Granting Temporary Restraining Order.”

1 Plaintiff's counsel stated Plaintiff filed a Reply in Support of Plaintiff's Motion on
 2 Friday, June 24, 2016. The Reply, however, was not processed through the Court's eFlex System
 3 and was not available for the Court or counsel for Defendants' review until the morning of June
 4 27, 2016, when this matter came on for hearing to determine whether the TRO previously
 5 granted by Judge Freeman should be extended to a Preliminary Injunction. The Court granted a
 6 short recess in the proceedings to allow defense counsel to review the Reply.
 7

8 At the June 27, 2016 hearing the Court heard oral arguments from counsel for Plaintiff
 9 and counsel for Defendants. Additionally, two witnesses called by Defendants, Dan Anderson, a
 10 Defendant and the Chief Financial Officer ("CFO") of BRI, as well as Carl George, one of the
 11 Principals of Eagle Private Equity, a venture capital firm that had made a One Million Dollar
 12 (\$1,000,000.00) line of credit available to BRI, testified in opposition to Plaintiff's Motion. The
 13 TRO enjoined BRI from accessing the Eagle Private Equity line of credit pending trial on the
 14 merits so as not to potentially dilute Plaintiff's percentage ownership of shares in BRI.
 15

16 Having heard the testimony of the two witnesses mentioned above, as well as oral
 17 argument of counsel for both Parties, and having read Plaintiff's Motion, Defendants' Opposition
 18 thereto and Plaintiff's Reply, and being fully advised on all relevant matters, the Court
 19 announced its decision on the record at the conclusion of the hearing and enters the following
 20 Order memorializing that decision.
 21

22 The Court notes the decision as to whether a preliminary injunction should be granted
 23 rests with the sound discretion of the District Court. *Dangberg Holdings Nevada, L.L.C. v.*
 24 *Douglas County*, 115 Nev. 129, 978 P.2d 311 (1999). In order for a party to be granted a
 25 preliminary injunction to preserve the status quo pending trial, the moving party must show (1)
 26 that he enjoys a reasonable probability of success on the merits; and (2) that the defendant's

1 conduct, if allowed to continue, will result in irreparable harm for which compensatory damages
 2 are not an adequate remedy. *Dangberg*, *supra*. *See also, Pickett v. Comanche Const. Co.*, 108
 3 Nev. 422, 426, 836 P.2d 42 (1992), and *Dickson v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029
 4 (1987).

5 The Court finds the testimony of Dan Anderson, the CFO of BRI, credible and
 6 persuasive. Mr. Anderson testified BRI is presently “unbankable” due to being involved in
 7 litigation in several states, including Nevada and because of its present inability to timely file
 8 necessary documents with the Securities and Exchange Commission (“SEC”) as a result of an
 9 ongoing internal investigation involving Plaintiff Holms. He also testified the Eagle Private
 10 Equity transaction is good for BRI, which needs private equity funding to acquire new assets
 11 especially in light of the current buyer’s market that exists for mineral rights in the oil and gas
 12 industry. He further testified the five percent (5%) fee being charged by Eagle Private Equity to
 13 BRI for use of the funds is reasonable and the transaction with Eagle Private Equity does not
 14 harm the Plaintiff, Mr. Holms, because at least five steps must occur before Mr. Holms’ stock
 15 would be diluted.

16 Mr. Anderson also testified credibly the communications with Carl George began in
 17 September, 2015, well before negotiations in the Derivative Action which ultimately resulted in
 18 a Settlement Agreement between Mr. Holms and Mr. Graiwer had commenced. Accordingly, the
 19 Court finds it is unlikely that the Eagle Private Equity transaction was designed to disrupt the
 20 settlement between Mr. Holms and Mr. Graiwer in the Derivative Action as Holms argues.

21 Also testifying credibly at the hearing was Carl George, one of the Principals of Eagle
 22 Private Equity. He testified to twenty-five (25) years of experience in the oil and gas industry
 23 explaining that BRI was a “tainted company,” due to the conduct of Plaintiff Holms while CEO

1 of the Company. He testified that although the Eagle Private Equity transaction does not have an
 2 express security provision the ability to convert funds loaned to BRI to Series A Preferred stock
 3 in the event of certain actions (the five steps referenced by Mr. Anderson) acted as the necessary
 4 security. Mr. George explained such security was necessary for Eagle Private Equity to commit
 5 its capital investment in BRI and the security was based on market principles. Importantly, there
 6 was no evidence presented by Plaintiff to contradict this testimony.
 7

8 The Court finds the ability of a company to maintain institutional knowledge is
 9 important, that capitalism is a game of risk, and none of the procedures set forth in the agreement
 10 between Eagle Private Equity and BRI are illegal or improper. This includes the BRI Board's
 11 amendment to its Bylaws on February 9, 2016, to provide for staggered Board terms as well as
 12 the terms of the Eagle Private Equity financing. Importantly, Plaintiff's counsel admitted during
 13 argument that nothing BRI or its Directors had done was illegal.
 14

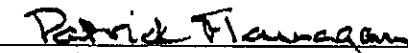
15 The Court further finds Nevada's business judgment rule, codified at NRS 78.138(3), sets
 16 forth a presumption that in making a business decision the Directors of the Company acted on an
 17 informed basis, in good faith and in the honest belief the action was taken in the best interests of
 18 the Company.
 19

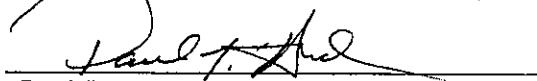
20 Given the evidence presented to this Court, as viewed under the template of the business
 21 judgement rule set forth above, as well as the standards Plaintiff is required to establish to
 22 convert a TRO into a preliminary injunction, the Court finds Plaintiff Holms (1) does not enjoy a
 23 likelihood of success on the merits, and (2) will not suffer irreparable harm if the TRO entered
 24 on May 24, 2016 is dissolved and vacated. Moreover, the Court finds Holms has admitted he has
 25 a remedy at law, monetary damages, which he identifies and requests as a form of relief in the
 26 Verified Complaint. The availability of monetary damages to a plaintiff such as Holms further

1 establishes he is not entitled to injunctive relief. *Number One Rent-A-Car v. Ramada Inns, Inc.*,
2 94 Nev. 779, 587 P.2d 1329 (1978).

3 Based on the above, the Court hereby dissolves and vacates the Temporary Restraining
4 Order entered on May 24, 2016 and denies Plaintiff's Motion for Preliminary Injunction.

5 Dated this 14 day of July, 2016.

6
7 
8 JUDGE PATRICK FLANAGAN
9 DISTRICT COURT JUDGE

10
11 RESPECTFULLY SUBMITTED BY:
12 

13 Paul J. Anderson, Esq., NSB #709
14 4785 Caughlin Parkway
15 Reno, Nevada 89519
16 Tel.: (775) 827-2000
17 Fax: (775) 827-2185
18 *Attorneys for Defendant*